IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

SECOND APPEAL NO. 306 OF 2007

IN

CIVIL APPEAL NO. 115 OF 2004

IN

REGULAR CIVIL SUIT NO. 110 OF 2001

WITH

C.A. NO. 615 OF 2007

Mrs. Priya Raghuveer Sawantdesai
& Anr. ... Appellants
(Orig. Plaintiffs)

Versus

Ratnagiri Municipal Council ... Respondent
(Orig. Defendant)

Mr. K.S.Dewal, Advocate, for the appellants.

CORAM: J.H.BHATIA,JJ.

DATE : 18th September, 2007.

P.C.

1. Heard learned Counsel for the appellants.

2. The appellants had taken certain property i.e. Industrial Gala Nos. 36 and 37 from the respondent, which is Ratnagiri Municipal Council. The respondent had by an advertisement called tenders for allotment of the Galas. As per the advertisement, the minimum rent was to be Rs.800/-. The quotation of the appellants was accepted and the rent was fixed at Rs.950/- and Rs.975/- per month. They also deoposited the premium amount of Rs.90,500/- for each plot. The agreement was executed accordingly and the appellants took possession of the said property. Later on, they filed Civil Suit No.110 of 2001 in the Court of 2nd Joint Civil Judge, Junior Division, Ratnagiri, contending that the rent was excessive and as per rules, it should be nominal rent. They also sought directions to provide basic facilties like road, drainage, electricity, water,etc. as per the terms of the contract. The trial Court decreed the suit and also held that the nominal rent as per rules should be Rs.200/- and Rs.225/- per month for plot Nos. 37 and 36 respectively.

3. The said decree was challenged by the respondent - Municipal Council in Civil Appeal No.115/2004. The Appeal was allowed to the extent of the rent amount. The appellate Court set aside the decree passed by the trial Court and held that the plaintiffs are liable to

pay rent as per the agreement at the rate of Rs.950/- and Rs.975/- per month respectively. The remaining part of the decree was maintained. Therefore, the plaintiffs have filed the Second Appeal.

4. After going through the record, I find no fault with the observations of the appellate Court that rent is Rs.950/- and Rs.975/- per month as per the agreement executed by the parties. The trial Court has not given any reason, on the basis of which rent could be fixed at Rs.200/- and Rs.225/- in the face of the terms of the agreement between the parties. The learned trial Court observed that when the agreement is in conflict with the rules, rules should prevail. This legal position is correct. But I find no conflict in Rule 10 of the Maharashtra Municipalities (Transfer of Immovable Property) Rules 1983 and the agreement between the parties. I find no substance in the present Appeal.

5. The learned Counsel for the appellants contended that the First Appeal was heard and decided without deciding the application for condonation of delay filed by the applicants and, therefore, the judgment passed is liable to be set aside. I am unable to agree with this contention. Admittedly, the application for condonation of delay was filed by the Municipal Council. If without passing any order on that application, the District

Court heard the Appeal and allowed it, it may be presumed that the delay in filingthe appeal was also condoned impliedly.

6. No substantial question of law is involved in the present Appeal. Therefore, the Appeal stands dismissed.

7. As the Appeal is dismissed, the Civil Application does not survive and stands disposed of accordingly.

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(J.H.BHATIA,J.)